

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOYLE WILLIAM PALMER,

Defendant-Appellant.

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UNPUBLISHED

August 2, 2011

No. 295309

Wayne Circuit Court

LC No. 08-012323-FC

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree premeditated murder, MCL 750.316(1)(a), two counts of felony murder, MCL 750.316(1)(b), and one count each of arson of a dwelling house, MCL 750.72, first-degree home invasion, MCL 750.110a, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to life imprisonment for each of the four murder convictions, and concurrent prison terms of 12 to 80 years each for the arson and home invasion convictions and two to five years for the felon-in-possession conviction, to be served consecutive to a five-year term of imprisonment for the felony-firearm conviction. He now appeals as of right. We vacate two of defendant's convictions and sentences for first-degree murder and remand for correction of the judgment of sentence to reflect two convictions of first-degree murder, each supported by alternative theories of first-degree premeditated murder and first-degree felony murder, and affirm in all other respects.<sup>1</sup>

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<sup>1</sup> Defendant's murder convictions arise from the death of two individuals. Defendant was convicted of killing each victim under alternative theories of first-degree premeditated murder and first-degree felony murder. Although defendant does not raise a double jeopardy challenge, his four convictions and sentences for murder, arising from the deaths of two individuals, violates well-established double jeopardy principles. Accordingly, we vacate two of defendant's convictions and sentences for first-degree murder and remand for correction of the judgment of sentence to reflect two convictions of first-degree murder, each supported by alternative theories

Defendant's murder convictions arise from the shooting and stabbing death of John Mascow and the stabbing death of Dennis Langley. The victims shared a house in Riverview and worked together in a vending machine business that was owned by Langley. Sometime after 10:00 p.m. on February 27, 2008, Mascow was shot and stabbed several times while he was lying in his bed. Langley's burned body was found in an attached garage that had been set on fire. An autopsy established that Langley had been stabbed several times and died before his body was exposed to the fire. Investigators determined that an accelerant was used to start the fire in the garage. There was evidence that some papers were lit on fire in the bedrooms of the house, but extinguished on their own. Langley's van was discovered a couple of blocks from his house and it too had been set on fire. Cigarettes and coins were missing from the van.

Defendant previously assisted in Langley's vending machine business on occasion and had also performed work at Langley's house. When defendant was interviewed by the police days after the homicides, he had a large bruise on his forearm, a black eye, and a deep cut on his left hand. Blood found at the scene and on a knife at the scene matched defendant's DNA. A glove for a left hand was found in the kitchen of Langley's house and had been cut in the same area where defendant's left hand had been cut. Blood inside the glove matched defendant's DNA, and blood on the outside of the glove matched defendant's, Mascow's, and Langley's DNA.

The police arrested Alicia Hartner, Michael Wellwood, and Phillip Morris, as other suspects in the case, but the charges against them were dismissed after they were excluded as possible donors of the blood found at the scene. Defendant gave several conflicting statements to the police. He initially denied having anything to do with the case or being present at Langley's home, but eventually stated that he was at the house to sell cocaine to Langley, and claimed that he and Langley were surprised by Hartner, Wellwood, and Morris, who actually committed the crimes.

## I. PHOTOGRAPHIC EVIDENCE

Defendant argues that the trial court erred in admitting several photographs of the victims' bodies. Defendant contends that the photographs should have been excluded under MRE 403 because of their graphic and gruesome nature. "A decision whether to admit photographs is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *People v Gayheart*, 285 Mich App 202, 227; 776 NW2d 330 (2009).

The photographs were introduced during the medical examiner's testimony and were offered to explain and corroborate his testimony concerning the manner and cause of each victim's death, and as being probative of intent and premeditation. The trial court reviewed each photograph and excluded two of them as unduly graphic and either cumulative to other photographs or unnecessary to the prosecutor's case.

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of first-degree premeditated murder and first-degree felony murder. *People v Bigelow*, 229 Mich App 218, 220-222; 581 NW2d 744 (1998).

Defendant argues that the photographs should have been excluded under MRE 403 because of their graphic nature. MRE 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *People v Sabin (After Remand)*, 463 Mich 43, 57-58; 614 NW2d 888 (2000). Unfair prejudice does not mean any prejudice, but refers to “the tendency of the proposed evidence to adversely affect the objecting party’s position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury’s bias, sympathy, anger, or shock.” *People v Pickens*, 446 Mich 298, 337; 521 NW2d 797 (1994).

Photographic evidence is generally admissible, so long as it is relevant, MRE 401, and not unduly prejudicial, MRE 403. *Gayheart*, 285 Mich App at 227. Although we agree that several of the photographs are graphic, particularly the photographs of the Langley’s charred body, “[g]ruesomeness alone need not cause exclusion.” *Id.* (citations and internal quotations omitted). Here, the photographs depicted the locations and nature of the victims’ wounds, and the absence of any defensive wounds, and were probative of the perpetrator’s intent. We disagree with defendant’s contention that the photographs were unnecessary because the medical examiner was able to describe and diagram the victims’ injuries. “Photographs may properly be used to corroborate other evidence and are not excludable simply because they are cumulative of a witness’s oral testimony.” *Id.* The admission of photographic evidence is justified because “[t]he jury is not required to depend solely on the testimony of experts, but is entitled to view the severity and vastness of the injuries for itself.” *Id.* While the photographs were certainly prejudicial by nature, the trial court did not abuse its discretion in determining that the probative value of the photographs was not *substantially outweighed* by the danger of unfair prejudice. Moreover, even if we were to conclude that the admission of such evidence was in error, we would nevertheless find that the error did not constitute reversible error.

MCL 769.26 provides that no judgment or verdict shall be set aside or reversed or a new trial be granted by any court on the ground of the improper admission of evidence unless in the opinion of the court, after an examination of the entire cause, “it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.” The burden is on the defendant to demonstrate that it is more probable than not that the error was outcome determinative, *People v Lukity*, 460 Mich 484, 495-496; 496 NW2d 497 (1999), and defendant has not met this burden. Not only was there vivid oral testimony describing the victim’s bodies and causes of death:

It may be presumed that today's jurors, inured as they are to the carnage of war, television and motion pictures, are capable of rationally viewing, when necessary, a photograph showing the scene of a crime or the body of a victim in the condition or the place in which found. *People v Mills*, 450 Mich 61, 77 n 11; 537 NW2d 909 (1995), quoting *People v Turner*, 17 Mich App 123, 132; 169 NW2d 330 (1969).

Because other competent, admissible evidence detailed the appearance of the victim’s bodies, and sufficient evidence linking defendant to the crimes existed (as will be discussed below) it does not affirmatively appear that it is more probable than not that the potentially erroneous admission of the photographs was outcome determinative, and defendant is not entitled to reversal.

## II. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that the evidence was insufficient to convict him of any of the charged crimes. We disagree.

When reviewing the sufficiency of the evidence, this Court must determine whether the evidence, viewed in the light most favorable to the prosecution, was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant was guilty of the charged crimes. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992). Circumstantial evidence and any reasonable inferences that can be drawn from the evidence may be sufficient to prove the elements of the crime. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). “This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). All conflicts in the evidence must be resolved in favor of the prosecution. *Id.*

Defendant does not dispute that there was sufficient evidence to enable the jury to find that the elements of each charged offense were proven beyond a reasonable doubt. He argues only that the evidence was insufficient to identify him as the person who committed the offenses. “[I]dentity is an element of every offense.” *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *People v Thomas Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

The prosecution’s theory at trial was that defendant committed the crimes or may have aided or abetted others in the commission of the crimes. To prove that a defendant aided and abetted in a crime, the prosecution must show that (1) the crime charged was committed by the defendant or another person, (2) the defendant performed acts or gave encouragement that assisted in the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); see also *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). An aider and abettor’s state of mind may be inferred from all of the facts and circumstances. *Carines*, 460 Mich at 757. But “[m]ere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person is an aider and abettor.” *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992).

Defendant argues that the evidence showed that Hartner, Wellwood, and Morris were the likely perpetrators. Even if they or someone else was involved, however, that would not prevent the jury from finding that defendant was guilty as an aider and abettor. To establish defendant’s guilt under an aiding and abetting theory, the prosecution was not required to convict or even identify another perpetrator. It was only required to prove that the crime was committed by someone and that defendant aided or abetted it. *Id.* at 609-611, 614.

The prosecution relied on physical and circumstantial evidence to connect defendant to this crime. Defendant’s DNA was the critical evidence that linked him to the deaths of both victims. Both victims had been stabbed and blood that was found on a knife at the crime scene and elsewhere in Langley’s house matched defendant’s DNA. In addition, a latex glove that had

been cut was found at the scene. Blood inside the glove matched defendant's DNA, and blood on the outside of the glove matched defendant's, Maschow's, and Langley's DNA. It was also undisputed that, after the offense, defendant was observed with a cut on his left hand in the same area as the cut on the latex glove. The presence of defendant's DNA on the knife supports an inference that defendant used the knife during the offense, and defendant's hand injury, along with the combination of defendant's, Langley's, and Maschow's DNA on the outer portion of the latex glove, and defendant's DNA on the inner portion of the glove, supports an inference that defendant was wearing the glove and used the knife to stab both victims, and that the glove was cut and defendant's hand injured while doing so. This evidence, viewed most favorably to the prosecution, was sufficient to enable a rational jury to find beyond a reasonable doubt that defendant, if not acting alone, aided and abetted the intentional killing of both victims. Although defendant offered explanations and alternative theories for viewing the evidence, it was up to the jury to weigh the evidence and determine the credibility of the witnesses. *Williams*, 268 Mich App at 419.

### III. CONCLUSION

The trial court did not abuse its discretion in admitting photographic evidence. Further there was sufficient evidence of defendant's identity to support his convictions. However, we vacate two of defendant's four convictions and sentences for first-degree murder on double jeopardy grounds and remand for correction of defendant's judgment of sentence to reflect two convictions and sentences for first-degree murder, each supported by alternative theories of first-degree premeditated murder and first-degree felony murder.

Affirmed in part, vacated in part, and remanded for correction of the judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly  
/s/ Peter D. O'Connell  
/s/ Deborah A. Servitto